No. 74-1141

In the Supreme Court of the United States

OCTOBER TERM, 1974

UNITED STATES OF AMERICA, PETITIONER

v.

BOBBY GENE GADDIS AND BILLY SUNDAY BIRT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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The Solicitor General, on behalf of the United States of America, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINION BELOW

The opinion of the court of appeals (App. A, *infra*) is reported at 506 F. 2d 352.

JURISDICTION

The judgment of the court of appeals was entered on January 9, 1975 (App. B, *infra*). By order of February 3, 1975, Mr. Justice Powell extended the time for filing a petition for a writ of certiorari to and including March 10, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether *Milanovich* v. *United States*, 365 U.S. 551, always requires a new trial when a defendant is convicted of the mutually exclusive offenses of bank robbery and possession of the proceeds of that robbery and, if it does so require, whether it should be overruled.

STATUTE INVOLVED

The federal bank robbery statute, 18 U.S.C. 2113, is set out in Appendix C, *infra*.

STATEMENT

On February 25, 1974, respondents met Billy Wayne Davis at a truck stop in Winder, Georgia (Tr. 160–161, 243–244).[1] Davis requested a sum of money that respondent Birt owed him (Tr. 160–161). Birt replied that he had no money but that he knew where some could be obtained. He stated that there was a bank in Loganville, Georgia, that he believed could be robbed easily because the town had only one police officer (Tr. 161). After further discussion, respondents and Davis drove to Loganville to observe the bank (Tr. 162–163); they returned for additional observation each of the next two days (Tr. 166).

On February 28, 1974, respondents stole a Ford station wagon and a Ford sedan, intending to use them in the robbery and the planned escape from Loganville to Winder (Tr. 166–168). During the morning of March 6, 1974, the trio drove to Loganville in three separate cars (Tr. 172). Respondent Gaddis drove his own car and parked it on a back road leading to Winder (Tr. 169, 172). The stolen Ford sedan was left in a church parking lot on the main highway from Loganville to Winder (Tr. 169, 172). Armed with an assortment of handguns, a rifle and a double-barreled shotgun, the three drove into Loganville in the stolen Ford station wagon (Tr. 169–170, 172–174).[2]

After ascertaining the whereabouts of Loganville's lone police officer, Davis and respondent Birt donned ski masks and gloves (Tr. 173). They entered the bank while respondent Gaddis remained in the automobile, parked in the rear of the bank (Tr. 174). Brandishing pistols, Davis ordered everyone to lie on the floor while Birt looted the cashiers' drawers (Tr. 175–176). On a pre-arranged signal the two returned to the station wagon with $7,501.73 in cash and prepared to flee (Tr. 105, 176).

By chance, Loganville's police officer discovered the proceedings (Tr. 67). Respondent Gaddis promptly fired the shotgun, striking the window on the right front door of the police car and wounding the officer in the face (Tr. 67–68, 75, 177). As the robbers left, respondent Birt fired a rifle shot at the policeman, who lay on the ground near his car (Tr. 69, 177). Birt shouted to Gaddis to stop the car so that he could "have it out with the police" (Tr. 177). Gaddis re-

[1] Davis was indicted with respondents and, prior to trial, pleaded guilty. He testified for the prosecution. He was sentenced to 20 years' imprisonment.

[2] Respondents, with the intention of robbing the bank, had previously followed this same procedure on both March 2 and 5, but due to various circumstances they had not put their plan into action (Tr. 168–172).

fused and drove to the predetermined locations where the stolen cars were successfully abandoned and the proceeds were divided (Tr. 178–179).

Davis's wife later deposited some of the "bait" money in a Toccoa, Georgia bank (Tr. 115). An agent of the Federal Bureau of Investigation visited the Davis home and discovered additional bait money in a freezer (Tr. 135). Mrs. Davis stated that she had received the money from her husband (Tr. 145). As a result of the agent's investigation, a grand jury returned an eight-count indictment charging respondents and Davis with having robbed a federally-insured bank by force and violence, in violation of 18 U.S.C. 2113(a) and (d), and having possessed the funds stolen in the robbery, in violation of 18 U.S.C. 2113 (c). There was no evidence at trial of any receipt or possession of the robbery proceeds by respondents except for the robbery itself.

The district court's instructions to the jury included a complete description of the elements of each count of the indictment. The instruction on the count charging possession of the proceeds of the robbery informed the jury that it could convict on this count if defendants had either actual or constructive possession of the proceeds (Tr. 335–336, 339). The court did not tell the jury that conviction on the robbery counts would preclude conviction on the possession count, or that the possession crime created by Section 2113 (c) was directed against a class of offenders other than those who had participated in the robbery itself. Following the charge to the jury, the trial court

asked for exceptions or additions to the charge. Counsel for respondents neither objected nor offered additional instructions (Tr. 341).

The jury convicted both respondents on all counts. At sentencing, the trial judge remarked upon the serious nature of respondents' crimes and imposed on each respondent terms of 20 years' imprisonment for aggravated bank robbery (2113(a)), 25 years' imprisonment for assault in the course of the bank robbery (2113(d)), and 10 years' imprisonment for possession of the proceeds (2113(c)), all sentences to run concurrently. The trial judge stated (Tr. 346):

> [T]he court realizes that twenty-five years is the maximum, and the cases say that there is a merger of all of those offenses. If there is any question as to the legality of that sentence, that's the Court's intention.

The court of appeals reversed and ordered a new trial (App. A, *infra*). Although respondents had not objected to the instructions, the court held that it was plain error to permit the jury to convict for both taking and possessing the proceeds of the same bank robbery. We do not contest this portion of the court's holding. Relying on *Milanovich* v. *United States,* 365 U.S. 551, and *United States* v. *Abercrombie,* 480 F. 2d 961 (C.A. 5), certiorari denied, 414 U.S. 1008, the court went on to hold that, because there were no means for determining what verdict a properly instructed jury would have returned, and because the jury's verdict was inconsistent, "the proper appellate remedy is to remand for a new trial" (App. A, *infra,* p. 18).

REASONS FOR GRANTING THE WRIT

The district court may indeed have erred by failing to inform the jury that it could not convict respondents of both the aggravated robbery and their possession of the proceeds. But the holding of the court of appeals—that the only appropriate remedy is a remand for a second trial on all counts—also is erroneous, and it raises a question of substantial practical importance in the administration of criminal justice.

In many cases, the court permits a jury to return a verdict of guilty on a number of counts although, because of controlling principles of law or the inadequacy of the evidence, it is subsequently determined that the jury should not have been permitted to convict on all counts. As the number of rules designed to improve the quality of our legal process increases, this type of legal error becomes more common; courts and counsel, despite the best preparation and precautions, may overlook one or more of the settled principles while attending to the many other demands of a trial.

When such an error occurs, a desire for procedural perfection might lead to requiring a new trial, in the hope that the second trial will be error-free. But second trials are costly and should be resorted to only where necessary to accomplish substantial justice. They are costly in terms of judicial time and resources that could be devoted to other pressing needs. They are costly in prosecutorial time; the trial of other individuals may have to be postponed or foregone entirely. And they are costly in terms of achievement of the ends of public justice itself. Evidence may be lost, the memories of witnesses may fade, and witnesses may die or decline to testify.[3] Some of these changes in the availability of evidence may impair the accused's opportunity for a fair trial no less than the government's ability to prosecute those guilty of crime.

Because new trials are costly in so many ways, an accused is generally considered entitled to but a single fair trail. *Lutwak* v. *United States,* 344 U.S. 604, 619. If an individual has been found guilty after a full opportunity to be tried fairly before an impartial jury, the courts should order a new trial only if it is impossible to rectify, in another manner, any error that may have occurred during the first trial. We submit that this is an occasion where rectification without a new trial is both possible and desirable, and that the approach of the court of appeals is unnecessarily rigid and formalistic.

1. *Heflin* v. *United States,* 358 U.S. 415, held that Congress, when enacting the bank robbery statute, "was trying to reach [in the section forbidding possession or receipt of robbery proceeds] a new group of wrongdoers, not to multiply the offense of the bank robbers themselves" (358 U.S. at 420). The Court stated that Section 2113(c) provided punishment only "for those who receive the loot from the robber" (*id.* at 419). Subsequently, *Milanovich* v. *United States,*

[3] This case illustrates the problems that can be presented by second trials. We are informed by the United States Attorney that Davis, the government's principal and probably indispensable witness at the first trial, has a new attorney, through whom he has demanded release from prison in return for voluntary cooperation at a second trial. Although Davis could presumably be compelled to testify—his Fifth Amendment privilege has been extinguished by his conviction for this crime—such involuntary testimony might well be inadequate.

365 U.S. 551, applied the *Heflin* principle to larceny and receipt of the proceeds under 18 U.S.C. 641, and held that the jury must be charged that it may convict of either larceny or receiving the proceeds but not both.

In *Milanovich* the petitioners (husband and wife) had transported three confederates to the site of a planned robbery and were to wait while the robbery took place. But petitioners left prematurely, and when the three confederates discovered that their transportation had departed without them, they buried the loot. Some weeks later Mrs. Milanovich retrieved the money.

She was indicted and convicted both for the theft and for her receipt and concealment of the stolen currency. The district court sentenced her to concurrent terms of ten years' imprisonment for her part in the theft and five years' imprisonment for receipt of the proceeds. The court of appeals concluded, in light of *Heflin*, that the conviction for receipt of the proceeds was improper; it accordingly vacated the conviction on that count.

This Court found that the "evidence was sufficient to support a conviction for either larceny or receiving" (365 U.S. at 554). If the jury had concluded that Mrs. Milanovich's connection with the robbery had been sufficiently tenuous, it might have acquitted her on the robbery count and convicted her of receipt many days later of the proceeds. Because the jury might have convicted on either count, and because an appellate court was deemed not to be entitled to speculate which course a jury would have taken if properly instructed, the Court remanded for a new trial on both counts.

2. Since *Milanovich* was decided, lower federal courts have adopted a variety of conflicting approaches to cope with the recurring problems created by improper instructions to the jury and the remedy approved by this Court. For example, the Ninth Circuit has held that *Milanovich* does not apply to a charge of possession (as opposed to receipt of stolen goods) when joined with the robbery charge itself. *United States* v. *Tyler*, 466 F.2d 920, certiorari denied, 409 U.S. 1045. Accord, *Gentry* v. *United States*, Civ. No. 1–74–147, E.D. Tenn., decided November 11, 1974. These courts therefore would have decided this case differently from the court below, which earlier had expressly rejected the *Tyler* approach.[4] *Abercrombie, supra.*

Other courts have held that when the sentences under the robbery and possession counts are concurrent, further inquiry into the charge to the jury is unnecessary. See, *e.g., Ethridge* v. *United States*, 494 F. 2d 351 (C.A. 6), certiorari denied, November 18, 1974, No. 74–5259. Accord, *Tyler, supra; Gentry, supra.* But this approach has been expressly rejected by *Glass* v. *United States*, 351 F. 2d 678 (C.A. 10), and *United*

[4] We do not believe that *Tyler* is analytically correct. As the Court stated in *Milanovich*, *supra*, 365 U.S. at 554, there is no difference significant for these purposes between the charge of receipt of stolen goods under the larceny statute and the charge of possession of stolen goods under the bank robbery statute.

States v. *Roach,* 321 F. 2d 1 (C.A. 3), both of which hold that a new trial is required on all counts because, if a properly instructed jury had returned a different verdict, a different sentence might have been imposed.

A third line of cases holds that, regardless of the instructions given to the jury, if that jury convicts of robbery or possession, but not both, a new trial is not required. See, *e.g., United States* v. *Dixon,* 507 F.2d 683 (C.A. 8), petition for a writ of certiorari pending, No. 74-5869; *United States* v. *Sharpe,* 452 F.2d 1117, 1119 (C.A. 1); *United States* v. *Ploof,* 464 F. 2d 116 (C.A. 2) (by implication).

Finally, in the Fourth and Fifth Circuits a new trial is required whenever the jury is not told that it must not convict of both possession and the robbery itself. *Abercrombie, supra; Thomas* v. *United States,* 418 F. 2d 567 (C.A. 5); *United States* v. *Harris,* 346 F. 2d 182 (C.A. 4).

This divergence among the circuits is undesirable. Although there is not a square conflict on the precise issue we present in this petition, we submit that review of the decision below would significantly clarify the recurring issues raised by *Milanovich.*

3. The most common problem arising under Section 2113 is presented in this case. Frequently an individual robs a bank and is charged with both the robbery and the subsequent possession of the proceeds. The joinder of charges is proper because the evidence developed at trial, while proving possession or receipt of the robbery proceeds at sometime following the robbery, may not show a sufficiently strong connection between the accused and the robbery itself to justify

a conviction for that robbery. But if, as it did here, the evidence demonstrates a venture to rob a bank, and there is no evidence of any transfer of possession of the proceeds other than from one robber to another immediately after the event, then there is no need to submit the possession count to the jury. Indeed, often there is literally no evidence tending to show possession other than that immediately derived from the robbery.

We submit that these cases ordinarily should be treated as if a count unsupported by the evidence had been submitted to the jury. Any conviction on such a count should be set aside, and, perhaps, the case should be remanded for resentencing in light of the change in circumstances. But it is inappropriate to order a new trial, which would serve neither the interests of justice nor the needs of judicial economy.[5]

Such an approach is in our view fully consistent with both *Heflin* and *Milanovich. Heflin* itself, a collateral attack under 28 U.S.C. 2255, simply ordered the district court to vacate the "illegal" sentence for possession. In *Milanovich* the evidence would have

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[5] When a jury erroneously convicts of both a greater and a lesser included offense, the appellate court routinely vacates the conviction of the lesser offense without requiring a new trial. See, *e.g., Fuller* v. *United States,* 407 F. 2d 1199, 1227, 1230 (C.A.D.C.) (*en banc*), certiorari denied, 393 U.S. 1120. Even when the jury has acquitted of the lesser offense incident to conviction of the greater, an appellate court, on finding the evidence insufficient to establish the greater offense, may in the interests of judicial economy remand for entry of a judgment of conviction on the lesser count, where such result accords with the purport of the jury's verdict. *Allison* v. *United States,* 409 F. 2d 445, 451-452 (C.A.D.C.).

been sufficient to convict of either robbery or possession, since there was substantial independent evidence of the latter, although the statute does not permit conviction on both. It therefore may have been appropriate to allow the jury, in the first instance, to express a preference. But in the instant case all of the evidence established respondents' participation in the robbery, and, assuming that the jury correctly concluded that the respondents robbed the bank, there was no evidence that would have supported the possession count. That crime, *Heflin* emphasized, can be committed only by "those who receive the loot from the robber" (358 U.S. at 419).

4. If, however, this Court should agree with the court of appeals that *Milanovich* requires a new trial of respondents, then we submit that *Milanovich* should be re-examined. As we have contended in *Iannelli* v. *United States*, No. 73–64, argued December 17, 1974 (brief at pp. 44–56), even when two counts are erroneously submitted to a jury that should have been told that it can convict of only one, all of the consequences of the error can be corrected at the time of sentencing.[6] The trial court can vindicate the accused's interest in avoiding double punishment by imposing concurrent sentences. In this fashion the court will not "pyramid penalties for lesser offenses following the robbery" (*Heflin, supra,* 358 U.S. at 419). Appellate courts could afford adequate relief by vacating an impermissible sentence and, where necessary or appropriate, remanding to the district court for resentencing.[7]

[6] A copy of our brief in *Iannelli* is being furnished to counsel for respondents.

Because, under *Heflin,* anyone *except* a robber can commit the crime of possession of the proceeds, the first inquiry ought to be "Is the accused a robber?" If the answer is "yes," then the possession count is superfluous, whether or not the jury has convicted of possession and whether or not there was evidence to support such a conviction. Only if the answer is "no" is it necessary for the jury, or an appellate court, to examine the possession charge further.

The procedure we have suggested safeguards all of the accused's legitimate interests by fully protecting him or her against multiple punishments for a single offense. It is unnecessary for this Court to go further and require a new trial simply in the hope of securing from the jury fully consistent verdicts, for consistency among verdicts is not required. *Hamling* v. *United States,* No. 73–507, decided June 24, 1974, slip op. 10–11.

The Court should take this opportunity to clarify the law and, to the extent necessary, to rectify a situation in which judicial resources now are squandered without further vindicating the congressional pur-

[7] Although in this case the district court inaccurately described all the Section 2113 offenses as having merged upon conviction (Tr. 346), we submit that this statement discloses that court's recognition that additional punishment for the possession count is not permissible. Accordingly, it would be fully consistent with the district court's sentencing scheme to vacate the conviction for possession and leave the other sentences standing or, in the alternative, to remand for resentencing.

pose not to pyramid punishments, and without improving the quality of justice.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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MARCH 1975.

APPENDIX A

United States Court of Appeals, Fifth Circuit

No. 74–2495

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE,

v.

BOBBY GENE GADDIS AND BILLY SUNDAY BIRT,
DEFENDANTS-APPELLANTS.

January 9, 1975

Appeal from the United States District Court for the Middle District of Georgia.

Before THORNBERRY, MORGAN, and CLARK, Circuit Judges.

THORNBERRY, *Circuit Judge:*

At 10:30 a.m., March 6, 1974, two armed men entered the National Bank of Walton County in Loganville, Georgia, and ordered everyone to lie on the floor. While one man kept the bank personnel and customers covered, the other jumped over the teller's counter and took $7,501.73 from the cashier's drawers, patting two female tellers on the cheek as he did so. The two then ran outside the bank where a third person waited at the wheel of the getaway car. While making their escape the robbers exchanged gunfire with Loganville's lone police officer, William R. Cody. None of the robbers were immediately apprehended. Several weeks later, however, Mrs. Mary Davis deposited some of the "bait money" in a Toccoa, Georgia bank. F.B.I. Agent Kane visited Ms. Davis' home, and discovered additional bait money in the freezer.

Pursuant to the FBI investigation, the government presented its evidence to the grand jury. That body returned an eight count indictment charging Bobby Gene Gaddis, Billy Sunday Birt, and Billy Wayne Davis, Mary Davis' husband, with various violations of the federal bank robbery statute, 18 U.S.C. § 2113. Billy Wayne Davis pled guilty and testified for the government at the joint trial of Gaddis and Birt. Count three of the indictment charged the three with possession of the money stolen from the National Bank of Walton County in violation of 18 U.S.C. § 2113(c).[1] The other counts of the indictment charged violations of subsections (a), (b), and (d) of the statute.[2] The trial judge's charge permitted the jury to convict Gaddis and Birt on all eight counts of

[1] "(c) Whoever receives, possesses, conceals, stores, barters, sells, or disposes of, any property or money or other thing of value knowing the same to have been taken from a bank, or a savings and loan association, in violation of subsection (b) of this section shall be subject to the punishment provided by said subsection (b) for the taker."

[2] "(a) Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, or any savings and loan association; or

Whoever enters or attempts to enter any bank, or any savings and loan association, or any building used in whole or in part as a bank, or as a savings and loan association, with intent to commit in such bank, or in such savings and loan association, or building, or part thereof, so used, any felony affecting such bank or such savings and loan association and in violation of any statute of the United States, or any larceny—

Shall be fined not more than $5,000 or imprisoned not more than twenty years, or both."

"(b) Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value

the indictment, and the jury's verdict did so. Neither the government nor the defense objected to the charge in that form. Yet we find the charge to have been plain error, and reverse and remand for a new trial.[3]

United States v. Abercrombie, 5th Cir., 480 F.2d 961, cert. denied, 414 U.S. 1008, 94 S.Ct. 368, 38 L.Ed.

exceeding $100 belonging to, or in the care, custody, control, management, or possession of any bank, or any savings and loan association, shall be fined not more than $5,000 or imprisoned not more than ten years, or both; or

Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value not exceeding $100 belonging to, or in the care, custody, control, management, or possession of any bank, or any savings and loan association, shall be fined not more than $1,000 or imprisoned not more than one year, or both."

"(d) Whoever, in committing, or in attempting to commit, any offense defined in subsections (a) and (b) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined not more than $10,000 or imprisoned not more than twenty-five years, or both."

18 U.S.C. § 2113(a), (b), (d).

[3] Appellants raise two points in addition to their inconsistent verdict complaint. First, they claim reversible error because of certain remarks that the district attorney made during the course of the tiral. We have examined those remarks in the context of the entire record and find no reversible error. In two instances, the trial court gave a curative instruction upon defense objection. In the other instances, we find that the remarks did not constitute plain error. The cumulative effect of the prosecutor's conduct did not deprive the appellants of a fair trial.

Appellants also complain that the trial court erred in failing to require the government to produce FBI interview reports pertaining to two government witnesses. We have examined those reports, and agree with the trial judge that the reports do not fall within the definition of "statement" in 18 U.S.C. § 3500(e). The trial judge properly refused to require the government to produce the material for defense inspection.

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2d 245 (1973), directly controls our decision here. *Abercrombie* specifically holds that it is plain error to allow a jury to convict an accused of taking and possessing the same money obtained in the same bank robbery. 480 F.2d at 964. The trial judge in the case at bar did precisely that. Subsections (a), (b), and (d) do not create separate offenses. Rather they describe various stages or aggravated forms of the basic crime of stealing property from a federally-insured institution. Prince v. United States, 1957, 352 U.S. 322, 77 S.Ct. 403, 1 L.Ed.2d 370; United States v. White, 440 F.2d 978 (5th Cir. 1971). This is not true of subsection (c). That subsection states a separate, distinct, and incompatible offense to those covered in the other subsections. Forrester v. United States, 5th Cir. 1972, 456 F.2d 905; United States v. White, *supra*. It relates to possessing or receiving the property stolen in the robbery. In establishing that offense, Congress was attempting to reach a new class of offenders, not to multiply the offense of the bank robbers themselves. Heflin v. United States, 1959, 358 U.S. 415, 79 S.Ct. 451, 3 L.Ed.2d 407. The jury's verdict below convicted Gaddis and Birt on seven counts relating to taking money from a federally-insured bank and on one count of possessing the same money.

There is no way of knowing what verdict a properly instructed jury would have returned in this case, and for a reviewing court to speculate on that subject would be to usurp the functions of both the jury and the sentencing judge. Milanovich v. United States, 1961, 365 U.S. 551, 81 S.Ct. 728, 5 L.Ed.2d 773. Since the jury's verdict was inherently inconsistent, the proper appellate remedy is to remand for a new trial. United States v. Abercrombie, *supra;* United States v. White, *supra*.

Reversed and remanded.

APPENDIX B

United States Court of Appeals for the Fifth Circuit

OCTOBER TERM, 1974

No. 74-2495

D. C. Docket No. CR-74-3

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE
v.
BOBBY GENE GADDIS AND BILLY SUNDAY BIRT,
DEFENDANTS-APPELLANTS

Appeal from the United States District Court for the Middle District of Georgia

Before: THORNBERRY, MORGAN AND CLARK, *Circuit Judges.*

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Middle District of Georgia, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and the same is hereby remanded to the said District Court in accordance with the opinion of this Court.

JANUARY 9, 1975.

Issued as Mandate: JANUARY 31, 1975.

APPENDIX C

The federal bank robbery statute, 18 U.S.C. 2113, provides:

> (a) Whoever, by force and violence, or by intimidation, takes, or attempts to take, from the person or presence of another any property or money or any other thing of value belonging to, or in the care, custody, control, management, or possession of, any bank, credit union, or any savings and loan association; or
>
> Whoever enters or attempts to enter any bank, credit union, or any savings and loan association, or any building used in whole or in part as a bank, credit union, or as a savings and loan association, with intent to commit in such bank, credit union, or in such savings and loan association, or building, or part thereof, so used, any felony affecting such bank, credit union, or such savings and loan association and in violation of any statute of the United States, or any larceny—
>
> Shall be fined not more than $5,000 or imprisoned not more than twenty years, or both.
>
> (b) Whoever takes and carries away, with intent to steal or purloin, any property or money or any other thing of value exceeding $100 belonging to, or in the care, custody, control, management, or possession of any bank, credit union, or any savings and loan association, shall be fined not more than $5,000 or imprisoned not more than ten years, or both; or
>
> Whoever takes and carries away, with intent

to steal or purloin, any property or money or any other thing of value not exceeding $100 belonging to, or in the care, custody, control, management, or possession of any bank, credit union, or any savings and loan association, shall be fined not more than $1,000 or imprisoned not more than one year, or both.

(c) Whoever receives, possesses, conceals, stores, barters, sells, or disposes of, any property or money or other thing of value knowing the same to have been taken from a bank, credit union, or a savings and loan association, in violation of subsection (b) of this section shall be subject to the punishment provided by said subsection (b) for the taker.

(d) Whoever, in committing, or in attempting to commit, any offense defined in subsections (a) and (b) of this section, assaults any person, or puts in jeopardy the life of any person by the use of a dangerous weapon or device, shall be fined not more than $10,000 or imprisoned not more than twenty-five years, or both.

(e) Whoever, in committing any offense defined in this section, or in avoiding or attempting to avoid apprehension for the commission of such offense, or in freeing himself or attempting to free himself from arrest or confinement for such offense, kills any person, or forces any person to accompany him without the consent of such person, shall be imprisoned not less than ten years, or punished by death if the verdict of the jury shall so direct.

(f) As used in this section the term "bank" means any member bank of the Federal Reserve System, and any bank, banking association, trust company, savings bank, or other banking

institution organized or operating under the laws of the United States, and any bank the deposits of which are insured by the Federal Deposit Insurance Corporation.

(g) As used in this section the term "savings and loan association" means any Federal savings and loan association and any "insured institution" as defined in section 401 of the National Housing Act, as amended, and any "Federal credit union" as defined in section 2 of the Federal Credit Union Act.

(h) As used in this section the term "credit union" means any Federal credit union and any State-chartered credit union the accounts of which are insured by the Administrator of the National Credit Union Administration.

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